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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1084

BIRDIE MAE DAVIS, EDWIN FOSTER, and JAMES E. BUSKEY, et al.,

Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, et al.,

ALFREDO G. PARRISH, et al.,

Petitioners,

v.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR, et al.

REPLY BRIEF IN SUPPORT OF CERTIORARI

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The *Davis* respondents suggest that, although Judge Hand may indeed be prejudiced against attorneys associated with the N.A.A.C.P. Legal Defense Fund and their clients, that is irrelevant since Mr. Buskey and Mr. Foster are represented by J. U. Blacksher, Esq. of Mobile, Alabama.[1] As Judge Hand was well aware, however, Mr. Blacksher is among the attorneys associated with the Legal Defense Fund. It was as an attorney connected with the Fund that Mr. Blacksher and his associates were attacked by Judge Hand on August 29, 1974, and that Mr.

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[1] Brief of Board of School Commissioners, pp. 3-5.

Blacksher represents petitioners Buskey and Foster. See Petition, 53a.

The *Parrish* respondents urge that the judgment of which review is sought is interlocutory in nature. *Parrish* presents a somewhat unusual situation, in that a single appeal has been divided by the Fifth Circuit into two parts; the recusal issue was decided *en banc* on December 4, 1975, and the summary judgment issues have been "remanded to the original panel for disposition." Petition, 43a. It appears, however, that the 90 day period for filing a writ of certiorari as to the December 4 decision commenced on that date, and that a petition regarding recusal filed after the remaining panel decision would be untimely. Section 2101, 28 U.S.C., provides that the 90 days commences upon the entry of "judgment", and Rule 36, Federal Rules of Appellate Procedure, provides that, "The notation of a judgment in the docket constitutes entry of the judgment." An appropriate entry was made in the docket of the Fifth Circuit Court of Appeals on December 4, 1975, in the form and manner used for any other entry of judgment.[2] Were *Parrish* the only decision in which review is sought, it might be appropriate for the Court to defer consideration of the petition concerning recusal until after the panel decision on the remaining issues. However, in view of the importance of the issues involved, and of the differences between the circumstances of *Parrish* and *Davis*, we would suggest that the Court grant certiorari in both cases in order to provide the lower courts

[2] The notation in the docket reads, "Opinion on rehearing en banc affirmed as to denial of the motion to disqualify. Except as to that issue the appeal is remanded to the original panel for disposition." The Clerk's Office advises us that an ordinary judgment is framed in precisely this way, merely stating that the decision below has been affirmed or reversed, and that it is not their practice to use the term "judgment" in such notations.

with necessary guidance as to their responsibilities under sections 144 and 455.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgments and opinions of the Fifth Circuit.

Respectfully submitted,

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